IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.8608 OF 2005

The State of Maharashtra through
Secretary & Ors. ...Petitioners.
Vs.
Shri Subhashchandra Bapusaheb Patankar
Deputy Education Officer (Secondary). ...Respondent.
....
Mr. N.P. Deshpande, AGP for the Petitioners.
Mr. Shekhar Ingawale for the Respondent.
.....
CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

April 3, 2006.

ORAL JUDGMENT (Per Dr. D.Y. Chandrachud, J.):

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondent waives service. By consent of Counsel and at the request of Counsel taken up for hearing.

I

2. The Maharashtra Administrative Tribunal has, by its judgment dated 15th September 2005, which is impugned in these proceedings by the State of Maharashtra, directed the Government

to revoke an order by which the Respondent was suspended. The State has been directed to reinstate the Respondent to the post of Deputy Education Officer (Secondary). The Tribunal while noting that the Respondent was arrested in a trap case by the Anti Corruption Bureau in January 2004, has ordered the revocation of suspension on the ground that no chargesheet has been filed in the criminal case though a period of seventeen months has elapsed. The Tribunal has relied upon the view which it has taken in earlier cases that where a trial is likely to take a long period of time and there is no likelihood of the delinquent tampering with witnesses, the authorities should revoke the order of suspension. After hearing the AGP for the Petitioner and Counsel appearing on behalf of the Respondent, we have arrived at the view that the order of the Tribunal is manifestly erroneous and that it has to be quashed and set aside. We now proceed to elucidate our reasons.

II

3. The Respondent was holding the post of a Deputy Education Officer (Secondary) at Kolhapur. He was incharge of work pertaining to litigation and an Assistant Teacher had filed an application before the School Tribunal at Kolhapur. The Assistant Teacher lodged a complaint with the Anti Corruption Bureau and a

trap was laid on 2nd January 2004. In the course thereof, it is alleged that the Respondent came to be arrested while he was accepting a bribe of Rs.10,000/- and C.R. 3 of 2004 was registered by the Shahupuri Police Station at Kolhapur. By an order dated 6th January 2004, the Respondent came to be placed on suspension under the provisions of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 by the Joint Secretary in the School Education Department of the State of Maharashtra.

4. The Respondent instituted an application before the Maharashtra Administrative Tribunal in order to challenge his suspension from service contending inter alia that no chargesheet had been filed even though a period of fifteen months had elapsed from the date of the incident and the order of suspension. The Respondent relied on a Government Resolution dated 3rd April 2000 and contended that he had made a representation claiming reinstatement, and that had not received any response.

5. A reply was filed on behalf of the State of Maharashtra in which it was submitted that in view of a subsequent Resolution dated 16th March 2001, issued by the State of Maharashtra,

amending the earlier GR dated 3rd April 2000, there could be no revocation of the order of suspension merely upon the completion of a period of six months after the suspension had come into force. The State Government stated in its reply that sanction had been granted by the Government for filing a chargesheet against the Respondent in a letter dated 3rd June 2005 to the ACB. Moreover, it was submitted that the Respondent had been arrested while he was accepting a bribe and that the misconduct being of a serious nature, no case for revocation of suspension was made out. It was also stated that Government had come to the conclusion prima facie that this was a fit and proper case to grant sanction for filing a chargesheet and that upon the conclusion of investigation, the Anti Corruption Bureau would take the investigation to its logical conclusion.

6. The Tribunal allowed the application by its order which is impugned in these proceedings. The Tribunal noted that by the GR dated 16th March 2001, the provisions in the earlier Government Resolution dated 3rd April 2000 for the automatic revocation of an order of suspension, in a case where a chargesheet has not been filed within six months have been

deleted. However, having said this, the Tribunal allowed the application on the ground that: (i) No chargesheet has been filed in the Criminal Case though seventeen months had elapsed; (ii) Where a criminal case is likely to take a long period of time and there is no likelihood of the delinquent tampering with witnesses, the authorities should revoke the order of suspension; and (iii) No review has been undertaken by the authorities of the case even after seventeen months.

7. We find, upon hearing Counsel for the parties that each of the reasons which have weighed with the Tribunal in quashing and setting aside the order of suspension are specious. As a matter of fact, it has been stated before the Court that after sanction was issued by the Government, a chargesheet has been filed on 26th August 2005. It would appear that the Tribunal was not apprised of this fact and notice was, therefore, not taken thereof when the judgment was delivered on 15th September 2005. But to our mind, the judgment of the Tribunal raises a far more fundamental issue. The Tribunal notes that it has taken a view in other cases, that where criminal cases are likely to take a “long period of time” and the delinquent is not likely to tamper with

witnesses, the authorities should revoke the order of suspension. We find absolutely no basis for this proposition of law enunciated by the Tribunal. The power to institute disciplinary proceedings against an erring employee on a charge of misconduct lies solely within the province and jurisdiction of the employer and the position is no different when the employer happens to be the State. In every case it is for the employer to determine as to whether the charges are of a nature that should be examined or investigated into by convening disciplinary proceedings. Whether an employee should be suspended during the pendency of disciplinary proceedings is a matter for the employer to determine, a decision which the employer will arrive at in the best interest of the service. The question as to whether an employee who is under a cloud is likely to tamper with witnesses pending a disciplinary enquiry, may at the highest be one of the factors that would be considered by the employer. Equally if not more important, the employer is required to consider the nature of the charges, the surrounding circumstances of the case, and the impact on the morale of the establishment of keeping an employee who is being proceeded against with, on a serious charge of misconduct on duty pending disciplinary proceedings. A trap case of the kind involved here

where an employee of the State has been arrested allegedly while accepting the bribe, involves a serious act of misconduct and it would be wholly inappropriate for the Tribunal to direct revocation of suspension. Interference by the Tribunal in such cases is liable to give rise to the belief that brazen acts in violation of public morals can be committed with impunity by public officials, forming the belief that this would not invite any disciplinary consequence. Even as a matter of first principle, Courts must avoid such interference since it is manifestly within the disciplinary jurisdiction of the employer to determine whether an employee should be placed under suspension.

8. A Division Bench of this Court had occasion to consider a similar issue in a judgment rendered on 30th September 2005 (**State of Maharashtra vs. Raghunath Eknath Mundhe,** Writ Petition 6313 of 2005) to which one of us (Dr. D.Y. Chandrachud, J.) was a party. In the course of the judgment, the Division Bench observed thus:

> "The question is whether courts and/or Tribunals in the matter of suspension should interfere with the orders passed by the Disciplinary authority. In the normal course, it is the disciplinary authority who is the best Judge as to whether the person should be continued in

> suspension or not. If the delinquent is suspended, it is open to the disciplinary authority to review the order of suspension. In that context, the court can only exercise its powers of interference in a limited number of cases where it is shown that the decision to suspend is arbitrary and or is a mala fide exercise of power and or colourable exercise of power and/or the State or the authorities are not able to explain the reasons for suspension when it is for a unduly long period and adequate reasons are not forthcoming for the order of suspension. These must be the parameters on which every authority including M.A.T. must consider whilst dealing with an order of suspension more so in the cases of delinquent employees who hold the sensitive posts under Police services and such other services. It is not for the courts including the Tribunal to interfere with exercise of discretion by the disciplinary authority otherwise than in circumstances set out. We are coming across large number of matters, where the tribunal is interfering with the orders of suspension issued by the disciplinary authority merely on the ground that the chargesheet have not been issued and or that that some time has elapsed from the date of suspension. We must express our unhappiness with the approach of the tribunal in such matters."

9. The same view has been reiterated in a judgment of the Division Bench dated 17th January 2006 in the **State of Maharashtra vs. Shashikant Dhondiram Karande** (Writ Petition 8291 of 2005). We are in respectful agreement with the law enunciated by this Court in both these decisions. Another decision of this Court in **State of Maharashtra vs. Kishor Bhalchandra Kulkarni** (2006) 1 Bom. C.R. 117 also arose out of a decision of

the Administrative Tribunal, directing the State Government to reinstate employees of the Police Department on non-executive posts until the conclusion of the criminal trial pending under the Prevention of Corruption Act, 1988. The Division Bench held that it would be inconceivable for the State to allow such employees to resume duties when they face serious charges of corruption. The mere fact that employees were under suspension for nearly two years was not a ground to order reinstatement. In arriving at this conclusion, reliance was placed on the decision of the Supreme Court in **Allahabad Bank vs. Deepak Kumar Bhola**, (1997) 4 SCC 1 where the Supreme Court has held that :

> "the mere fact that nearly ten years have elapsed since the charge-sheet was filed, can also be no ground to allow the respondent to come back to duty on a sensitive post, unless he is exonerated of the charge."

The Division Bench held as follows :

> "A public servant who is charged of corruption should be kept away from the office until he is judicially absolved. Merely because a trial of such public servant is being delayed, that by itself should not be a ground for passing an order of reinstatement. If such public servant is reinstated and allowed to continue to do official acts until he is judicially absolved from the charge of corruption, by reason of reinstatement order it is public interest which suffers and sometimes even irreparably. When such public servant is allowed to hold public office, it would impair the morale of other persons manning such office."

The Court held that reinstating an employee who is facing a criminal trial on a serious charge involving moral turpitude would destroy public confidence and demoralise other honest public servants. As against this if a public servant who is facing a charge of corruption is acquitted upon trial and is finally absolved of the charge of corruption, the order of suspension can always be revoked and upon reinstatement directions can be issued in regard to consequential benefits. A public servant may approach the appropriate Court for expediting the trial but he cannot seek reinstatement on the ground that the trial is not likely to be completed early or is likely to be prolonged.

10. At the hearing of the petition it has also been urged that the order of suspension was under Regulation 4(2)(a) of the

Maharashtra Civil Service (Discipline and Appeal) Rules, 1979. Under Rule 4(2)(a), a Government servant is deemed to have been placed under suspension by order of the appointing authority, with effect from the date of his detention if he is detained in Police or judicial custody whether on a criminal charge or otherwise for a period exceeding 48 hours. In the present case, it was urged that this requirement was not fulfilled and that consequently, the petitioner should be reinstated. We do not find that this point was raised either in the grounds before the Tribunal or in the submission made at the hearing. In para 3 of the order of the Tribunal, the Tribunal records that the submission that was urged was that a chargesheet was not filed in spite of the lapse of seventeen months, that there was no likelihood of the Respondent tampering with the evidence and under the G.R. dated 3rd April 2000 a chargesheet ought to have been filed within six months. Apart from the fact that the point that has been urged here was not urged before the Tribunal, in any event, it would have always been open to the State Government to exercise the power of suspension under Rule 4(1)(a) where a disciplinary proceeding is contemplated or is pending or under 4(1)(c) where a case against an employee in respect of any criminal case is under investigation, enquiry or

trial. There can be no gainsaying the fact that the power of suspension has to be exercised under Rule 4(1)(c) where the criminal offence that is under investigation, enquiry or trial involves a serious act of misconduct relating to moral turpitude. The nature of the allegations in this case which will be adjudicated upon at the criminal trial for an offence under the Prevention of Corruption Act is such as would clearly warrant the exercise of the power of suspension under Section 4(1)(c). It is also trite law that a mere reference to a wrong provision of law will not invalidate an order where the power does exist and has been exercised.

11. The order passed by the Maharashtra Administrative Tribunal is patently unsustainable. The reasons which weighed with the Tribunal in directing that the order of suspension be revoked are ex-facie untenable. The petition has to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer clause (a). There shall be no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.